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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,900	09/25/2003	Allen Berger JR.	230199.3	2230

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EXAMINER

CANFIELD, ROBERT

ART UNIT PAPER NUMBER

3635

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/669,900
Filing Date: September 25, 2003
Appellant(s): BERGER, ALLEN

MAILED

SEP 14 2006

GROUP 3600

Jesus Sanchelima
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 22, 2006 appealing from the Office action mailed July 13, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,950,398

Hubbard

09-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

As noted in the Advisory Action mailed August 17, 2005 the claims as amended in the after final amendment of August 05, 2005 would remain rejected under 35 USC 102(b) as being anticipated by U.S. Patent 5,5950,398 to Hubbard.

Hubbard provides transparent panel 11 having an external surface 17 including a coplanarly extending peripheral flange, the underside of which comes into abutting contact against a peripheral external surface of an opening at 14. An internal surface 18 is dimensioned to pass through the opening as discussed. If one considers the opening to be defined as the space between the reveal 16 and face 14 then inner surface 18 clearly passes through the opening as shown in figures 2 and 3. Further, column 3, lines 64+ recite that the pane 18 is dimensioned so as to easily pass by the opening in the sash. Column 2, line 35 further recites that the unit is sized so as to pass through the opening provided in the sash.

(10) Response to Argument

Applicant argues that the inner pane 18 of Hubbard (equated to the internal surface of claim 1) does not pass through the opening of the sash but rather is kept with the sash on rabbet 12. This is not found persuasive because as noted in the rejection if one considers the opening to be defined as the space between the reveal 16 and face 14 then inner surface 18 clearly passes through the opening as shown in figures 2 and 3. Column 3, lines 64+ recite that the pane 18 is dimensioned so as to easily pass by the opening in the sash. Column 2, line 35, further recites that the unit is sized so as to pass through the opening provided in the sash.

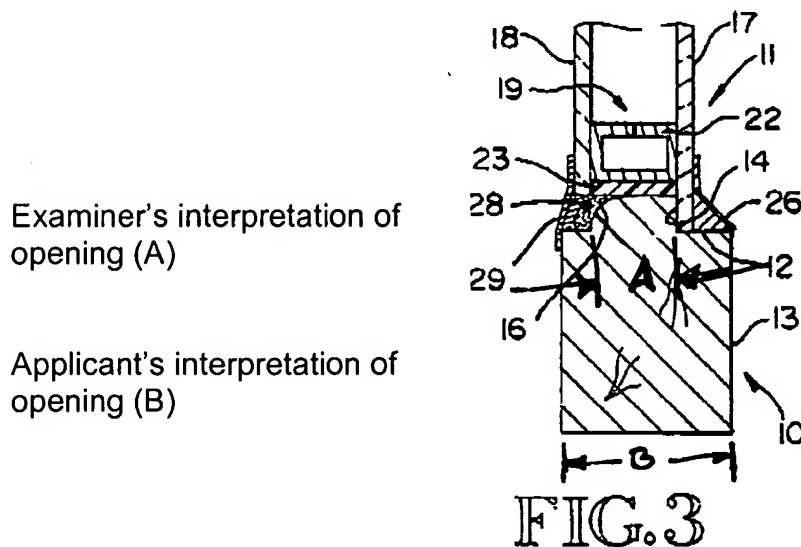
Applicant next argues that claim 1 requires peripheral flange members that come in abutting contact against the external surface adjacent the opening and that the underside of Hubbard's external surface 17 is received within the opening. This is not found persuasive as external surface 17 is clearly shown outside of the opening defined from reveal 16 to face 14. As shown and described the underside of pane 17 comes in abutting contact with face 14 which is outside of the opening.

Basically the examiner is considering the opening as the surface extending from approximately 16 to 14 or distance "A" below. Applicant argues that there is no evidence of record that one of ordinary skill in the would equate the internal opening defined by rabbet or reveal with the true opening of the sash (page 8 of

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the brief). First, this statement itself appears to be an admission that there is an opening as applicant references it as the "internal opening". Second, Hubbard itself is the evidence of record supporting such an interpretation. As noted in several locations throughout the specification the pass-by window unit is sized to pass through the opening in the sash, namely column 3, lines 64+, which recite that the pane 18 is dimensioned so as to easily pass by the opening in the sash, and column 2, line 35, which further recites that the unit is sized so as to pass through the opening provided in the sash.

Applicant's arguments are base upon considering the opening of Hubbard as the distance between the outermost surfaces of the sash or the distance "B" below.



Applicant then argues that Hubbard uses two panes 17 and 18 and applicant utilizes only one. It is noted that this feature upon which applicant relies is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

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limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 1 only calls for a transparent panel having an external surface and an internal surface. As noted in the rejection Hubbard provides transparent panel 11 having exterior surface 17 and internal surface 18.

It is believed that the examiner has made a fair and just interpretation of the Hubbard reference as applied to applicant's claims

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Robert Canfield

Primary Examiner

A large, stylized handwritten signature in black ink, likely belonging to Robert Canfield, the Primary Examiner. The signature is written over the text "Primary Examiner".

Conferees:

Peter Cuomo

A handwritten signature in black ink, likely belonging to Peter Cuomo, one of the conferees. The signature is written over the text "Peter Cuomo".

Michael Safavi

A handwritten signature in black ink, likely belonging to Michael Safavi, another conferee. The signature is written over the text "Michael Safavi".